IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1272 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JESHABHAI NAJABHAI KODIYAT

Versus

STATE OF GUJARAT, SECRETARY ADIVASI JATI DEVELOPMENT DEPTT

Appearance:

1. Special Civil Application No. 1272 of 2000

MR MURALI N DEVNANI for Petitioner

MR PR ABICHANDANI, AGP for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/07/2001

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has prayed for a writ of mandamus directing the respondent authorities to accept vigat darshak card issued pursuant to the Malkan

Committee Report as the only evidence necessary to show that the petitioner belongs to Rabari community of Gir, Barda and Alech areas and is entitled to be treated as a scheduled tribe person.

2. In response to the notice issued by this Court, Mr PR Abichandani, learned AGP appears for the respondents and relies upon the affidavit in reply dated 9.5.2000. He further submits that as per the certificate given by the Range Forest Officer, Jam-Jodhpur, there is no village or ness in the reserved forest area under the jurisdiction of the said officer. Mr Abichandani, therefore, submits that the petitioner can never be treated as a person belonging to a scheduled tribe on the basis that the petitioner is residing in the Alech area of Jam-Jodhpur.

3. It is, however, not necessary to go into the controversy between the parties on merits as in the judgment dated 31.8.2000 rendered by a Division Bench of this Court in Letters Patent Appeal No. 1670 of 1999 and cognate petitions, this Court has held as under :-

> "The burden of proof of social status is always on the person who profess it to seek constitutional socio-economic advantages and its is no part of the duty of the State to disapprove or otherwise. ... ... In case the vigat darshak card is produced before the concerned Committee and the Mamlatdar, they may proceed to decide the applications of the candidates claiming to be treated as members of scheduled tribe and in taking up such exercise, they may consider such vigat darshak cards as a relevant material and the entries made therein to the correct unless there is any ground or material to disbelieve the same and find those entries to be wrong or false and each case has to be decided on its own facts and the applicant will be under an obligation to furnish the necessary materials, as may be required, besides the vigat darshak card itself. ...."

4. In view of the aforesaid principles laid down by the Division Bench in the judgment dated 31.8.2000, this petition is disposed of with a direction to the respondents to follow the principles laid down by this Court in the aforesaid Division Bench judgment.

It is clarified that this Court has not gone into the merits of the rival contentions and the question will

be determined by the competent authority in light of the principles laid down by this Court in the aforesaid judgment.

5. The petition is accordingly disposed of in terms of the aforesaid direction. Rule is discharged with no order as to costs.

(M.S. Shah, J.)
sundar/-